

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

BERNARD STEWART

Claimant

VS.

SHAWNEE COUNTY

Respondent

Self-Insured

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Docket No. 255,061

ORDER

Respondent appealed Administrative Law Judge Brad E. Avery's August 11, 2000, preliminary hearing Order for Medical Treatment.

ISSUES

The Administrative Law Judge found claimant injured his left knee on November 15, 1999, while working for the respondent. The Administrative Law Judge also found claimant provided respondent with the required ten-day timely notice of the accidental injury. Respondent was ordered to pay the past medical expenses as authorized medical and to provide claimant with medical treatment through orthopedic surgeon Brett E. Wallace, M.D.

On appeal, respondent requests the Appeals Board to reverse the Administrative Law Judge and to deny claimant's request for medical treatment for his alleged left-knee injury. Respondent argues claimant failed to prove that he suffered a work-related accidental injury. Furthermore, respondent argues that claimant failed to provide respondent with timely notice of the accidental injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the parties' briefs, the Appeals Board makes the following findings and conclusions:

Claimant is employed by the respondent as a grounds keeper. On November 15, 1999, claimant; his supervisor, Bob Hester; and another of respondent's employees, Larry Jacoby, were all painting railings of stairs located at the Expo Centre in Topeka, Kansas. In order to paint the railings, claimant had to be in a sitting position. As he got up from the sitting position to go on break that morning, claimant twisted and felt some soreness in his left knee. Claimant testified he told his supervisor, Bob Hester, immediately that he had soreness in his left knee. Claimant also testified he placed on respondent's calendar that is located in the break room the word "knee" in order to identify the date if his knee soreness

worsened. This particular calendar was used to note weekly schedules and other miscellaneous work events.

At that time, claimant did not request medical treatment or complete a report of accident because he hoped his knee would improve and he would not need medical treatment. But the left knee did not improve, and it started locking up on him at various times when he was walking or laying down. Finally, on February 29, 2000, he requested medical treatment from the respondent for his left knee injury. Respondent sent claimant to St. Francis Emergency Department where respondent employed physicians for the specific purpose to treat its employees injured at work.

Claimant was examined on March 1, 2000, and the physician's impression was left knee strain. Claimant was provided with a prescription for medication and referred to see orthopedic surgeon Brett E. Wallace, M.D., on March 8, 2000. The medical record from the St. Francis examination was admitted into the preliminary hearing record. Noted on the medical record was "Not work related." But claimant testified he did not tell either the nurse or the physician that his left knee was not related to his work with respondent. In fact, claimant testified the respondent would not have sent him to their designated workers compensation medical provider, St. Francis Emergency Department, unless claimant had notified the respondent that his left knee problem was related to an injury at work.

Before claimant could see Dr. Wallace, he was notified by respondent that his workers compensation claim for his left knee injury was denied, and respondent had no further responsibility for the injury. At that time, claimant retained an attorney, and at claimant attorney's request, he was examined by Pravin G. Sampat, M.D. who referred claimant for physical therapy treatment.

Affidavits from claimant's supervisor, Bob Hester, and David Bartels, respondent's superintendent, were admitted into the preliminary hearing record. Bob Hester's affidavit indicated he did not have any knowledge of claimant's alleged work-related November 15, 1999, left-knee injury until February 29, 2000. David Bartels' affidavit indicated he did not have any knowledge of claimant's alleged left-knee injury until he received the completed accident report on March 1, 2000.

Although respondent raised as an issue that claimant failed to prove his left-knee arose out of and in the course of his employment, on appeal, respondent's main emphasis was placed on arguing the timely notice issue. The Appeals Board agrees with the Administrative Law Judge's finding that claimant's left-knee injury arose out of and in the course of his employment while working for the respondent on November 15, 1999. Claimant's testimony is believable that he suffered an initial left-knee injury when he stood up from painting the stair railing. The left-knee soreness did not improve and later the left knee started locking up. Finally, when claimant did seek medical treatment, respondent's workers compensation physician diagnosed claimant with a left-knee strain. The left-knee strain was severe enough for the physician to refer the claimant for further examination and treatment with an orthopedic surgeon. Also, Dr. Sampat, who saw claimant at claimant attorney's request, diagnosed claimant with a left meniscal injury.

The Appeals Board also affirms the Administrative Law Judge's finding that claimant provided respondent with timely notice of the work-related accident within the ten-day statutory requirement.¹ Claimant's testimony established that he notified his supervisor immediately of the soreness in his knee when he got up from painting the railing on November 15, 1999. Additionally, claimant's testimony established he noted the word "knee" on respondent's monthly calendar located in the lunchroom, which was used for noting work schedules and other events. The Appeals Board finds this information that claimant provided respondent placed respondent on notice that claimant had received an injury to his left knee while he was working for the respondent.

The Appeals Board is mindful of the affidavits of claimant's supervisor and superintendent admitted into the preliminary hearing record. But at this point in the proceedings, the Appeals Board finds the Administrative Law Judge had to find claimant's testimony believable and not the affidavits of the respondent's representatives who did not testify in person before the Administrative Law Judge. Therefore, the Administrative Law Judge had the opportunity to observe the claimant testify and judge his credibility. Where there is conflicting evidence in the record, the Appeals Board gives some deference to the Administrative Law Judge's conclusions.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Brad E. Avery's August 11, 2000, preliminary hearing Order for Medical Treatment should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October 2000.

BOARD MEMBER

c: Roger D. Fincher, Topeka, KS
Larry G. Karns, Topeka, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director

¹See K.S.A. 44-520.